

REMARKS

The Office action of March 18, 2009, has been carefully considered.

The specification has been amended to add a reference to the prior PCT application, and to add subject matter headings.

Claims 1-13 have now been canceled and rewritten as new Claims 14-26, in proper form for U.S. practice, but otherwise of substantially the same scope as the original claims.

Claims 1-3 and 8 have been rejected under 35 USC 102(e) as anticipated by Gruau et al, while Claims 9-11 and 13 have been rejected under 35 USC 103(a) as obvious over Gruau et al.

As to the anticipation rejection, the Office action has noted that this rejection could be overcome by a showing under 37 CFR 1.132 that any invention disclosed, but not claimed, in the reference was derived from the inventor of the present application, and thus not made "by another." Applicants now submit a declaration in the names of the Bertrand Gruau and Herve Zakrzewski which states that together with Michel Bosshardt, they are the named inventors of U.S. Patent No. 7,037,456, which is the Gruau et al reference cited in the Office action.

To the extent that the cited patent 7,037,456 discloses, but does not claim the subject matter claimed in the above-identified patent application, the inventors state that the cited subject matter was invented by them, and therefore does not qualify as an invention "by another" as set forth in 35 USC 102(e).

The declaration is signed by the inventor Bertrand Gruau. After the signature by Mr. Gruau was obtained, the declaration was forwarded to inventor Herve Zakrzewski, who is no longer employed by Cebal, the Assignee of both applications. The declaration was mailed to Mr. Zakrzewski at his last known

address, and was returned by the French Post Office as being undeliverable.

In order to establish these facts, Applicants also submit a declaration of Pascale Georjon, a legal assistant at Alcan France S.A.S., Propriete Industrielle, in Lyon, France, who was responsible for sending the declaration to Mr. Zakrzewski. Attached to the Declaration is a letter that Ms. Georjon sent to Mr. Zakrzewski, a verified translation of the letter into English, and a copy of the envelope by which the letter was sent.

In her declaration, Ms. Georjon states her belief that Mr. Zakrzewski no longer resides in France.

As it is no longer possible to obtain the signature of Mr. Zakrzewski without extensive investigation as to his whereabouts, Applicants submit that the signature of Mr. Gruau should suffice to establish that the disclosure of U.S. Patent No. 7,037,456 which has been cited against the present patent application is actually the work of the inventors of the present application.

Regarding the rejection under 35 USC 103(a), Applicants believe that having established that the invention of the Gruau et al patent was not made "by another" under 35 USC 102(e), then Gruau et al is not a proper reference under 35 USC 102(e), and cannot therefore be a proper reference under 35 USC 103(a), as 35 USC 103(a) operates only through 35 USC 102.

Should it be necessary, Applicants believe that it can be established that the invention which is presently claimed was, at the time the invention was made, subject to an obligation of assignment to Cebal, the Assignee of the Gruau et al patent.

Withdrawal of these rejection is requested.

Claims 1-3, 8-11 and 13 have been rejected on the ground

of non-statutory obviousness-type double patenting over the claims of U.S. Patent No. 7,037,456. In order to overcome this rejection, Applicants submit herewith a Terminal Disclaimer, together with the required fee.

Finally, Claims 4-7 and 12 were withdrawn from the application following the restriction requirement. As these claims now depend from allowable claims, Applicants submit that these claims should be restored to the application.

In view of the foregoing amendments and remarks, Applicants submit that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ira J. Schultz", written in a cursive style.

Ira J. Schultz
Registration No. 28666
Attorney for Applicants
(703)837-9600, ext. 23

Dennison, Schultz & MacDonald
1727 King Street, Suite 105
Alexandria, VA 22314